

DATE: December 10, 2015

TO: Council Members

FROM: Karl Wagener
Executive Director

RE: Parcel Size and Land Conservation



STATE OF CONNECTICUT
COUNCIL ON ENVIRONMENTAL QUALITY

The Council has been discussing the prospects for attaining land conservation goals when the typical parcel of undeveloped land in Connecticut is known to be small in area. Thanks to data analysis by CEQ intern Daniel Pidgeon and DEEP's concurrent updating of summary P.A. 490¹ data, we can provide reliable numbers and compare those to the state's capacity to acquire land with the statutory goal in mind.

The average parcel of privately-owned forest land enrolled in P.A. 490 is approximately 45 acres.² This figure was derived by CEQ staff from municipal data submitted to DEEP³ and is consistent with survey data collected from landowners as part of the 2015 Yale University report, *Understanding Connecticut Woodland Owners*.⁴

(The average parcel of forest in Connecticut actually is considerably smaller than 45 acres, but our analysis considers only forest land classified as such under P.A. 490, which requires an owner to own at least 25 acres (which can be in multiple parcels). Below the 25-acre threshold, conservation is possible, but the high-impossible challenge that exists already and is described below would become fantastical.)

Goals and Reality

Connecticut's goal (CGS Section 23-8(b)) is for DEEP to hold about 321,000 acres, and the target date is set by the "Green Plan" at 2023. (This goal stands apart from the larger 21-percent statutory goal that also includes municipal, nonprofit and water utility landholdings.) DEEP currently has about 257,000 acres (mostly in fee ownership, but some conserved through easements), leaving a gap of roughly 64,000 acres. To meet the goal by 2023, DEEP will need to conserve 8,000 acres each year for the next eight years.

If the average acquisition were to mirror the average forest parcel size – 45 acres – DEEP would need to complete 178 transactions per year. Since 2010, DEEP has completed an average of seven (7) transactions yearly. It is unlikely (impossible, in my judgment) that DEEP can increase the number of annual transactions by 2,500 percent starting immediately.

Is the Answer to Seek Bigger Parcels?

DEEP's mountainous challenge would be lessened if the average acquisition were considerably larger than the average parcel of land. In 2015, the state collaborated with municipalities and nonprofit organizations to preserve the 1000-acre "Preserve" property in Old Saybrook, Essex and Westbrook – a conservation triumph worthy of the celebration it received. However, it was

highly unusual. Since 2010, the average parcel acquired by DEEP, not counting The Preserve, was 57 acres. If the anomalous Preserve is included, the six-year average rises to 78 acres.

(This is a good place to note that this memo focuses on forest land only. DEEP has identified a need to conserve other types of land (beaches, boat launch areas, fishing access, trails, grassland wildlife habitats and others). Many of those lands are quite likely to be smaller than forest parcels. In any event, the overwhelming percentage of land to be acquired will be forest land.)

While a considerable amount of land is owned privately in parcels exceeding 100 acres (with an average of 162 acres), their owners – as many as 1,000 – are the least likely to donate or sell their land in the next few years, according to the Yale report.

Even if the owners of “large” parcels opted to donate or sell land or easements, their average parcel size of 162 acres would only shrink the gap between the DEEP’s challenge and its capacity to acquire land, and not come anywhere near to closing that gap.

Barring an unexpected surge in acquisitions of large properties (and there is no evidence to suggest there will be such a surge), the number of transactions necessary to achieve the state’s goal so far exceeds DEEP’s capacity that the mismatch is startling.

Summary Data: Recent History vs. State Goal

	DEEP average, 2010-2015*	DEEP average, 2010-2015*	Needed to Meet Goal	Needed to Meet Goal	Needed to Meet Goal
	Not Including The Preserve	Including The Preserve	Assuming aver- age parcel size	Assuming recent parcel acquisition size (2000-2015)	Alternative Sce- nario: focus on larger parcels
Average Number of Acres Acquired per Year	400	563	8,000	8,000	8,000
Average Number of Parcels Ac- quired per Year	7	7	178	133	53
Average Acreage of Parcels Ac- quired	57	78	45	60	150

**2015 Data are through November*

Preservation-Minded Landowners Are Not Served

The Yale report provides many useful insights. Among them: a significant percentage of forest landowners want to see their land preserved permanently. (An unknown percentage would donate their land or a conservation easement – not in the report.) The age of the typical Connecticut

forest landowner is notable; more than a quarter are over 70, and only one in six are under 50. Given the pace of preservation, most of those landowners will not see their hopes fulfilled unless some wholly new method is created for willing (even eager) landowners to have their land preserved.

Proposal: 490 Forever

Under this concept as proposed by Lee Dunbar, a landowner could execute an easement based on a standard template to conserve his or her land with minimal expense or other impediments. In exchange, the landowner would be eligible for the current-use property tax valuation prescribed by P.A. 490 in perpetuity. (He used the analogy of a General Permit, whereby regulated entities register to be covered by the standard language of the permit; any deviations require individual attention.)

The Yale report concludes that Connecticut forest landowners are very astute and are far more familiar with conservation easements than their counterparts in other states.

Probably the biggest obstacle to this simple solution is the fact that easements require a recipient. The recipient takes on monitoring and, potentially (and regrettably), enforcement responsibilities should a participant, say, build on the land protected by a conservation easement.

By tying the easement to P.A. 490 (conceptually, not legally – see the note in red, below), the easement recipient would benefit from having municipal assessors observing and flagging egregious violations. Though it is not their job to enforce easements, it is the role of assessors to ensure that taxes are based on actual conditions; no assessor would want to see development on land taxed as forest land.

Fundamental difference

The “490 Forever” concept is aimed primarily at helping landowners conserve their lands while helping DEEP meet its acreage goals. However, it is fundamentally different from DEEP’s core land-conserving mission, which is to identify and conserve the best remaining parcels of land to fulfill specific needs: swimming access, fishing access, wildlife conservation, water protection, coastal resilience and others.

In contrast to traditional acquisition, the 490 Forever approach sets a low bar: the land simply meets the definition of “forest” under P.A. 490 and it is eligible. Acreage thresholds could be added or adjusted.

While DEEP should not be distracted from its core mission of identifying and acquiring the best remaining conservation lands, the core mission and the 490 Forever concept are not mutually exclusive. In the long run, if the 490 Forever concept is found to have merit and promise, some entity other than DEEP might need to be created to accept the easements.

Recommendation

The General Assembly could create a pilot program to allow 49 landowners (to pick an arbitrary number) to donate conservation easements to DEEP. The minimum acreage should be established (perhaps 40 acres?). A bill would have to authorize DEEP to create the easement template (“put the ease in easement” – SM), and a staff person would have to be available to answer questions and administer the pilot. If the requirements were limited to land currently classified as forest land under P.A. 490, towns would not lose any revenue.

There is no way of predicting the number of landowners (if any) who might take advantage of the pilot program. A pilot program would allow the state to gauge the level of interest without incurring much risk. There is not much to lose.

(If this concept is pursued, there are additional ideas that could be considered, such as requiring a right of first refusal (applying to sales outside the landowner’s family) to be conveyed to DEEP with the easement, a municipal opt-in whereby a municipality could elect to receive the easements, and making sure the easement template meets IRS requirements for tax deductions.)

Note: any pilot program should stand apart from the existing P.A. 490 laws. The Council should not advocate amending P.A. 490.

Reminder

The Council’s annual report will reveal ongoing declines in core forest acreage and populations of woodland birds and other wildlife.

Notes

1. P.A. 490, or Public Act 490, is the 1963 legislation that allows forest and farmland to be assessed and taxed at current-use value rather than highest-use or market value. It has long been codified in CGS Section 12-107. The law is regarded widely as one of the pillars of land conservation in Connecticut, but it addresses taxation only, not permanent protection or public use. More than 500,000 acres of forest land are classified as such under this law; of that amount, nearly 100,000 are owned by the state.

2. The figure of 45 acres is the average parcel size after state-owned land has been removed from the equation. While it might seem counterintuitive that state-owned land not subject to the property tax would be classified under P.A. 490, DEEP has classified (at considerable time and expense) about 90,000 acres of its land to clarify the value on which state PILOT (Payment in Lieu of Taxes) payments are made. (It would be much more efficient for the General Assembly to declare State Forest land to be forest for P.A. 490 purposes; I don’t know if this ever has been proposed.)

3. Since 2004, municipal assessors have been required to report annually to DEEP “the total number of owners of land classified as farm land, forest land or open space land as of the most recent grand list and a listing of the parcels of land so classified showing the acreage of each parcel, the total acreage of all such parcels, the number of acres of each parcel classified as farm land, forest land or open space land, and the total acreage for all such parcels.” (CGS Section 12-107d(k))

4. *Understanding Connecticut Woodland Owners: A Report on the Attitudes, Values and Challenges of Connecticut’s Family Woodland Owners*, by Mary L. Turrell, Yale School of Forestry and Environmental Studies, March 2015. The Forestry Division of DEEP collaborated. The report is available on the DEEP [website](#).